

1968

H. Grant Johnson and Helen Johnson, His Wife v. Salt Lake County Cottonwood Sanitary District : Appellant's Brief

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IN THE SUPREME COURT
OF THE STATE OF UTAH

H. GRANT JOHNSON and
HELEN JOHNSON, his wife,

*Plaintiffs and
Appellants,*

vs.

Case
No.
11077

SALT LAKE COUNTY COTTONWOOD
SANITARY DISTRICT,

*Defendant and
Respondent.*

APPELLANTS' BRIEF

Appeal from the Judgment of the Third District Court
In and for Salt Lake County, Utah
The Honorable D. Frank Wilkins, Judge

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Clark, Supreme Court, Utah

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SALT LAKE COUNTY COTTONWOOD
SANITARY DISTRICT,
*Defendant and
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Case
No.
11077

APPELLANTS' BRIEF

STATEMENT OF THE NATURE OF THE CASE

Appellants are the owners of a home at 6350 South 2300 East, Salt Lake County, Utah, which is serviced by respondent, Cottonwood Sanitary District of Salt Lake County. Respondent's main sewer lines clogged and backed the raw sewage into the basement of appellants' home, causing damages for which appellants sued.

DISPOSITION IN LOWER COURT

This matter was pre-tried and the issue of governmental immunity preserved by the Pre-Trial Court for determination in advance of trial. The matter was argued before the Honorable D. Frank Wilkins and he granted respondent's Motion to Dismiss with Prejudice on the ground that the Cottonwood Sanitary District was immune to suit.

RELIEF SOUGHT ON APPEAL

Appellants seek to have the judgment of dismissal reversed and the matter of governmental immunity determined adverse to respondent.

STATEMENT OF FACTS

Respondent is a sewer district organized under 17-6-1 Utah Code Annotated to serve the area in which the appellants' home is located. On March 15, 1966 raw sewage backed up in the main sewer lines of the respondent and into the home of plaintiffs. Plaintiffs claimed that this was due to the negligence of the sewer company in the operation of the main sewer lines.

It is stipulated that the sewer service to plaintiffs is the result of a contract, and for this service plaintiffs pay defendant the sum of \$3.00 per month.

UCA Section 17-6-3.4 provides as follows:

“The board shall have the right to sue and be sued, to enter into all contracts which it may consider desirable for the benefit of the district, and generally may do all things and perform or cause to be performed all acts which in its opinion are necessary or desirable in the conduct of its affairs and in the operation of the properties of the district.” (Page 610, Volume 2, Utah Code Annotated)

Honorable D. Frank Wilkins dismissed plaintiffs' complaint upon the ground and for the reason that he believed the governmental immunity provisions of the State Constitution prevented the district from being sued.

ARGUMENT

POINT I

SEWER DISTRICTS ARE LIABLE FOR THEIR BREACHES OF CONTRACT AND NEGLIGENT CONDUCT.

Sewer districts are liable for their breaches of contract and negligent conduct under Section 17-6-3.4 of the Utah Code Annotated and have so been held by analogy in a recent case in this court.

In the case of *Nestman vs. South Davis County Water Improvement District*, 16 Utah 2d 198, 398 P. 2d 203, this court had before it a flooding damage suit which was the result of the South Davis County

Water Improvement District's reservoir giving way. The court carefully examined the language of Section 17-6-3.4 and placed considerable emphasis on the words "sue and be sued" (See Page 201 Utah Report), and ruled that the doctrine of governmental immunity did not extend to the South Davis County Water Improvement District.

It is plaintiffs' position that their case is indistinguishable from the Nestman case.

It is a fact that one district is a sewer district and the other district is a water district, but both are organized and operating under exactly the same language as far as the creation of the district is concerned. In both cases the plaintiff was damaged as a result of claimed negligence on the part of the district. It would be difficult to distinguish between the needs of the community for pure water and water control and the needs of the community for an adequate sewage disposal system.

One aspect of the plaintiffs' case which seems to be much more persuasive of their rights to claim damages against the district is the contractual relationship between the district and plaintiffs. In addition to the ordinary duties which a district owes the public generally to handle its business in a reasonably careful manner, the district contracts for the sewage disposal services and receives \$3.00 per month for this service.

It is respectfully submitted that plaintiffs would have the right to expect a somewhat greater duty of care because of the contractual relationship than the general public might expect.

Some confusion is created in the laws of the State of Utah by reason of the holding of this court in *Cobia vs. Roy City*, 12 Utah 2d 375, 366 P.2d 986, wherein the court ruled that the municipal corporation was exempt from suit where it operated a sewage disposal system. Plaintiffs respectfully submit that the court's determination in the Roy City case was based upon the nature of the municipal corporation and that the subsequent ruling in the Nestman case clearly distinguishes the nature of the municipal governmental immunity and refuses to extend it to districts which do not qualify as municipal corporations but which are organized under the provisions of Title 17, Chapter 6-3.

Plaintiffs respectfully submit that the Nestman decision is applicable and that this court should reverse the Trial Court and remand the plaintiffs' cause for trial.

CONCLUSION

It is respectfully submitted that the Trial Court erred and that this court should enter an order re-

versing the Trial Court decision and ordering the trial of plaintiffs' case on its merits.

Respectfully submitted,

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